

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FILED**JUN 8 2006**

CLERK, U.S. DISTRICT COURT
By _____
Deputy _____

JULIANA DABOH
Plaintiff,

VS.

**BAYLOR HEALTH CARE SYSTEM
OCCUPATIONAL INJURY BENEFIT
PLAN, NO. 513**
Defendant.

Civil Action No. **1232**
3 - 06 CV 1006B

COMPLAINT

1. Juliana Daboh ("Plaintiff") files this her Complaint against Baylor Health Care System Occupational Injury Benefit Plan, No. 513 ("Plan").

**I.
Parties**

2. Plaintiff is an individual who resides in Dallas County, Texas.

3. The Plan, at all times material to this action, has been an employee benefit plan within the meaning of 29 U.S.C. § 1003(a)(2), located at 2001 Bryan Street, Suite 2200, Dallas, Texas 75201 and can be served by serving John Thomas, Senior Vice President-General Counsel, Baylor Health Care System, 3600 Gaston Avenue, Suite 150, LB 23, Dallas, Texas 75246.

**II.
Jurisdiction and Venue of ERISA Claims**

4. This action against the Plan arises under the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act"), 29 U.S.C. § 1001 *et. seq.*

5. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e)(1).

6. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2), because the breach

occurred in this District.

III.
Factual Background

7. The Plan was an employee occupational injury plan which provided wage replacement benefits and medical benefits for qualified employees of Baylor Health Care System ("Baylor") who were injured on the job and who qualify under the Plan.
8. The Plan is subject to ERISA.
9. Baylor, Plaintiff's employer, established the Plan.
10. At all pertinent times, Plaintiff was employed as a registered nurse at Baylor.
11. At all pertinent times, Plaintiff was a participant within the meaning of 29 U.S.C. § 1002(7), in the Plan.
12. On July 25, 2005, Plaintiff was injured on the job while performing the duties of her job.
13. On July 27, 2005, Plaintiff ceased working for Baylor due to the injury.
14. Plaintiff is not able to meet the physical requirements of any occupation due to this injury, and is continuing to incur medical expenses and/or requires further medical treatment related to this injury.
15. On August 31, 2006, the Plan denied Plaintiff wage replacement and medical benefits on the basis that Plaintiff's injury was due to a pre-existing condition.
16. Plaintiff has complied with all requirements of the Plan for an administrative appeal.
17. Plaintiff has met the requirements for continued receipt of wage replacement and medical benefits under the Plan.

18. The Plan provides:

The Plan pays benefits only on account of an "Injury." An "Injury" means damage or harm to the physical structure of the body resulting from:

- > an "Accident" (which means an event that –
 - > was unforeseen, unplanned, and unexpected;
 - > occurred at a specifically identifiable time and place;
 - > occurred by chance or from unknown causes; and
 - > results in physical injury to you);

Summary Plan Description, Page 11.

19. The Plan provides:

Totally Disabled or Total Disability

A medically demonstrated anatomical or physiological abnormality caused by an Injury, and commencing within six months from the date of Injury, which—

- > causes you to be unable to perform the normal duties for which you were employed;
- > causes you to be under the regular care of an Approved Physician; and
- > causes you to be unable to engage in Modified Duty or any other occupation for wage or profit.

Summary Plan Description, Page 46.

20. The Plan provides:

Medical Benefits

Subject to the medical management and other provisions of this Plan, medical services and supplies that are approved by the Claims Administrator . . . are covered at 100%, with no co-pays, deductibles or other out-of-pocket expenses to you, provided that all Plan requirements are satisfied. . . .

Summary Plan Description, Page 21.

21. The Plan provides:

From the first full day that you become Totally Disabled due to a covered Injury, this Plan provides Wage Replacement Benefits. The

benefit amount with equal 90% of your Pre-Injury Pay. . . .

Summary Plan Description, Page 17.

IV.

COUNT ONE

Breach of the Plan Provisions Claim Against the Plan

22. Plaintiff is entitled to wage replacement benefits and medical benefits under the Plan as Plaintiff meets the definition of disability and satisfies the requirements for medical benefits contained in the Plan.
23. Plaintiff has complied with her obligations to make proof of claim in accordance with the Plan's requirements.
24. Plaintiff is entitled to have the Court conduct a trial *de novo* of the issues stated herein.
25. In the alternative, the Plan's decision to deny Plaintiff's benefits is arbitrary and caprious.
26. The Plan operates with a conflict of interest because it operates the Plan in its own interest.
27. The Plan provides that when the Plaintiff is injured on the job that the Plan will pay wage replacement and medical benefits.
28. Such wage replacement benefits will be 90% of Plaintiff's lost wages for up to 110 weeks.
29. Such medical benefits will be 100% of covered charges for up to 110 weeks.
30. Pursuant to 29 U.S.C. § 1132(a)(1)(B), Plaintiff seeks from the Plan, wage replacement benefits, medical benefits which have not been paid to her and reinstatement for medical benefits for the period allowed in the Plan or which should have been allowed under the Plan.

V.

COUNT TWO

Attorney's Fees Pursuant to 29 U.S.C § 1132(g)(1) Against the Plan

31. Pursuant to 29 U.S.C. § 1132(g)(1), Plaintiff seeks an award of her reasonable and necessary

attorney's fees in connection with the prosecution of this action.

VI.
COUNT THREE
Pre-Judgment Interest

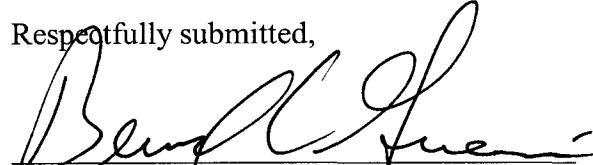
32. Plaintiff seeks an award of pre-judgment interest on the past due benefits payable to Plaintiff.

Prayer

WHEREFORE, Plaintiff requests that the Court order:

1. The Plan to pay Plaintiff the full employee benefits accrued and unpaid at the time of trial and/or reinstatement for medical benefits for the period allowed in the Plan or which should have been allowed under the Plan.
2. The Plan pay Plaintiff's reasonable attorney's fees incurred in pursuing recovery of benefits owed to him;
3. The Plan pay Plaintiff pre-judgment and post-judgment interest; and
4. That Plaintiff recover the cost of this action and such other and further relief as the Court may deem proper under the circumstances.

Respectfully submitted,



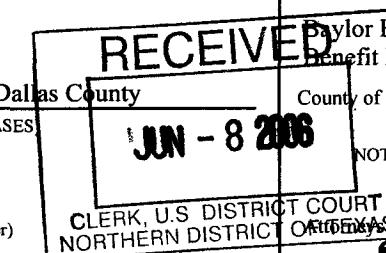
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 State Bar No. 08581700
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 Dallas, Texas 75206
 Phone: (214) 692-6556
 Fax: (214) 962-6578
 guerrinipc@erisaltd.com

ATTORNEY FOR PLAINTIFF

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, as approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Juliana Daboh

DEFENDANTSBaylor Health Care System Occupational Injury
Benefit Plan No. 513(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Bernard A. Guerrini, Bernard A. Guerrini, P.C. 6500 Greenville Ave., Ste.
320, Dallas, TX 75206, 214.692.6556 (v) 214.692.6578 (f)

3-06 CV 1006B

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question
(U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 | <input type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1395ff)	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:		
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 890 Other Statutory Actions	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 892 Economic Stabilization Act	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 893 Environmental Matters	
			<input type="checkbox"/> 894 Energy Allocation Act	
			<input type="checkbox"/> 895 Freedom of Information Act	
			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
			<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC 1140 & 29 USC 1132

Brief description of cause

Plaintiff's claim is for ERISA benefits from Defendants and attorney's fees

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

unliquidated

CHECK YES only if demanded in complaint

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/7/06
Bernard A. Guerrini
FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE